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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/064,416

07/11/2002

Thomas G. Topolski

TOP01 P-100

9321

28101

7590

12/05/2003

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EXAMINER

FERNSTROM, KURT

ART UNIT

PAPER NUMBER

3712

DATE MAILED: 12/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/064,416

Applicant(s)

TOPOLSKI, THOMAS G.

Examiner

Kurt Fernstrom

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-18 and 20-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-18 and 20-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 5-9, 14-18, 20-24, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerro in view of Hamblin. Lerro discloses in Figures 1, 4, 5 and 9 and in column 5, lines 30-59 a swim stroke training apparatus comprising a bicep/tricep float 103 which is adapted to be connected to a swimmer's arm, and which has a surface adapted to facilitate gliding through the water, whereby the float promotes an elevated elbow, and a paddle 104 which is attached to the forearm. The paddle has a portion which contacts the hand and a portion which contacts the forearm. Lerro fails to disclose that the forearm paddle is configured to convert forward motion into downward motion so as to promote downward motion of the hand and forearm. Hamblin discloses in Figures 2-4 and in column 1, line 71 to column 2, line 37 and column 3, lines 24-73 of the specification a swim stroke training apparatus comprising a forearm paddle 10 adapted to be connected with a swimmer's forearm, including a fin comprised of web elements 60 extending between ribs 36 and 37, best shown in Figure 2. The structure of the fin

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promotes downward motion, in that it converts generally forward motion into a generally downward force. Hamblin further discloses a forearm portion 11 which contacts a forearm of the user. It would have been obvious to one of ordinary skill in the relevant art to modify the device disclosed by Lerro as viewed in combination with Hamblin by providing a paddle having a fin extending downwardly of the type disclosed by Hamblin for the purpose of promoting downward motion of the hand and forearm during a swim stroke. With respect to claims 3 and 17, the forearm portion 11 has a surface 15 which applies pressure to the forearm. With respect to claims 5-7 and 20-22, Hamblin further discloses a stabilizer 23 which extends laterally and is gripped by the hand during use. With respect to claims 8, 8, 23 and 24, Hamblin further discloses a strap 25 which connects the paddle to the forearm. With respect to claims 14, 15, 29 and 30, Lerro discloses in Figure 1 the use of a pair of the paddle and float devices; one for each hand and arm respectively.

3. Claims 10, 11, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerro in view of Hamblin, and further in view of Lillo. Lerro as viewed in combination with Hamblin discloses all of the limitations of the claims with the exception of the strap connector connecting the float device to the arm. Lillo discloses in Figures 4-6 and in column 4, lines 12-36 40 to column 5, line 25 a swimming aid device comprising a float 22 which is connected to the swimmer's arm via straps 26 and 28 connect the arcuate portions to each other. It would have been obvious to one of ordinary skill in the relevant art to modify the device disclosed by Lerro as viewed in combination with Hamblin by providing a flotation mass in two arcuate portions

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connected together by a strap for the purpose of allowing the user to more easily attach the device to and remove the device from the arm portion of the swimmer.

4. Claims 12, 13, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerro in view of Hamblin, and further in view of Brom. Lerro as viewed in combination with Hamblin discloses all of the limitations of the claims with the exception of the flotation mass comprising two arcuate portions. Brom discloses in Figures 2 and 5 and in column 4, line 40 to column 5, line 25 a swimming aid device comprising two arcuate portions 22 and 23 which are connected to the swimmer's arm wherein straps 33 and 34 connect the arcuate portions to each other. It would have been obvious to one of ordinary skill in the relevant art to modify the device disclosed by Lerro as viewed in combination with Hamblin by providing a flotation mass in two arcuate portions connected together by a strap for the purpose of allowing the device to more easily conform to the arm portion of the swimmer. While Brom discloses a paddle attached to the arm, rather than a float, it is considered to be analogous art because both are directed to devices which are attached to a swimmer's arm to aid in training the swimmer. Also, the purpose of the two portions, to allow for conforming to a swimmer's arm, is not an advantage which would be restricted to paddles, but rather is equally useful to both types of devices.

***Response to Arguments***

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5. Applicant's arguments filed on October 2, 2003 have been fully considered but they are not persuasive. With respect to claims 1 and 16 as amended, Hamblin does read on the limitations which are not disclosed by Lerro. In the swimming position of Figure 2 mentioned by applicant, Hamblin discloses a hand portion and a forearm portion, where the hand portion comprises a fin which converts forward motion into downward motion. Applicant's arguments concerning the purpose of the fin of Hamblin are not persuasive because Lerro as viewed with Hamblin discloses the structure of the invention of claims 1 and 16.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Hamblin discloses the motivation of providing a fin of the type disclosed, namely that it provides additional reaction surface, to permit a more effective utilization of the energy of the swimmer. While the motivation may not be precisely the same as that contemplated by applicant, that is not the proper test for obviousness.

In response to applicant's argument that Hamblin is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to

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be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Hamblin is in the same field of endeavor as Lerro. While Hamblin does not explicitly discuss the use of the device in teaching swimming, it is extremely well known to provide paddles and fins to increase resistance during exercises for teaching swimming. The Examiner swam competitively for many years, and can personally attest to the wide usage of resistance paddles and fins during training exercises. Lillo is also considered analogous art, for the above reasons and because Lillo is explicitly directed to a swimming aid for use in teaching a user how to swim (see lines 1-2 of the Abstract). The prior art references have been properly combined.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however,

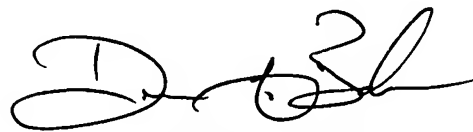
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will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (703) 305-0303.

KF

December 2, 2003

A handwritten signature in black ink, appearing to read 'D. H. Banks', with a large, stylized '3' or 'Z' shape at the end.

DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700